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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LINDA P. SMITH,

Plaintiff,

v.

XAVIER BECERRA,
in his official capacity as Secretary of
Health and Human Services,

Defendant.

**DEFENDANT'S MOTION
TO EXTEND STAY
FOR BRIEFING ATTORNEY FEES**

Case No. 1:21-cv-47 (HCN)

Howard C. Nielson, Jr.
United States District Judge

Defendant, the Secretary of Health and Human Services, respectfully moves to extend the current stay of briefing of attorney fees, pending a decision by the United States Court of Appeals for the Tenth Circuit whether to remand plaintiff's appellate fee petition to this Court. For the following reasons, good cause supports granting this motion.

1. On April 5, 2022, this Court granted plaintiff's unopposed motion to stay attorney fee briefing. *See* Docket Text Order, Apr. 5, 2022. The Court ordered the parties to file any briefs requesting attorney's fees within 30 days after the Court of Appeals were to issue its mandate in the then-pending appeal.

2. The Court of Appeals issued its mandate on December 16, 2022, ECF No. 64, and plaintiff's fee petition is currently due to this Court on January 17, 2023.

3. On January 9, 2023, plaintiff filed in the Court of Appeals a motion seeking fees and costs for appellate work conducted by her attorneys. On January 11, 2023, the government moved to remand that fee petition to this Court because the issue of attorney's fees is usually addressed by the district court in the first instance. On January 12, 2023, the Court of Appeals stayed briefing on plaintiff's appellate fees petition and ordered plaintiff to respond to the government's motion to remand by January 26, 2023.

4. Extending the current stay of attorney fee briefing in this Court, pending the Court of Appeal's decision whether to remand plaintiff's appellate fee petition, would best conserve the parties' resources and would serve the interests of efficiency and judicial economy. As plaintiff noted in her original motion to stay attorney fee briefing, it is beneficial for this Court to address fees a single time rather than in piecemeal fashion. *See* ECF No. 61 at 2. It thus behooves the parties and this Court to wait to see whether the Court of Appeals decides to remand plaintiff's appellate fee petition because if that petition is remanded the briefing can be consolidated and all fee issues considered at one time by this Court.

5. Undersigned counsel met and conferred with plaintiff's counsel via email and telephone on January 12 and January 13, 2023. Plaintiff's counsel informed undersigned counsel that plaintiff opposes this motion.

6. No prejudice to plaintiff or this Court will be occasioned by continuing the current stay.

Accordingly, the Court should grant this motion and continue the current stay of attorney fee briefing such that any briefs requesting attorney's fees be due within 14 days after the Court of Appeals decides whether to remand plaintiff's appellate fee petition. Should plaintiff file a fee petition in this Court prior to the Court of Appeals' decision, notwithstanding the instant motion

or the Court's action on it, then the government's deadline to respond to the district court fee petition should be stayed until after the Court of Appeals determines whether to remand plaintiff's appellate fee petition, and in such situation the government's consolidated response should be due within 14 days after the Court of Appeals decides whether to remand the appellate fee petition.

Dated: January 13, 2023

Respectfully submitted,

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/s/ Lisa Zeidner Marcus
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